

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

COLONEL ANTONIO NORED

Case No. 1:17-cv-134

Plaintiff,

Barrett, J.  
Bowman, M.J.

v.

JOHN A. CUOCO, et al.,

Defendants.

**REPORT AND RECOMMENDATION**

On March 1, 2017, Plaintiff, proceeding *pro se*, filed a motion to proceed *in forma pauperis* and attached his tendered complaint against the individual Defendant, John A. Cuoco. In a brief complaint, Plaintiff alleged that the Defendant has infringed upon Plaintiff's copyrighted work by publishing it, without Plaintiff's consent, on the internet. According to Plaintiff, his copyright is identified by registration number Pau 000525858.

On initial screening, the Court concluded that Plaintiff's complaint did not appear to be facially frivolous or malicious. Therefore, the Court directed service of the complaint upon Mr. Cuoco. However, on April 24, 2017, the summons form that Plaintiff completed was returned unexecuted. The attempt to serve Mr. Cuoco reflects that he no longer lives at the address listed by Plaintiff, and that the U.S. Postal Service was "unable to forward."

On May 2, 2017, the Court granted Plaintiff's motion to amend his complaint to add a new copyright claim against a newly identified Defendant, YouTube. At the same time, based upon the failure of Plaintiff to provide a valid address for the individual

Defendant, Mr. Cuoco, the Court first admonished Plaintiff that “[i]t remains [his] responsibility to identify Mr. Cuoco’s correct address for purposes of service on that Defendant, without which suit may not proceed against him.” (Doc. 8).

The docket sheet reflects that on May 23, 2017, Plaintiff transmitted to the Clerk’s office copies of forms required for service on YouTube, but did not return forms for service on Mr. Cuoco at a valid address. On June 12, 2017, this Court provided additional time for Plaintiff to provide a valid address for the Defendant, expressly noting:

Although the Court will bear the costs of service for a litigant who proceeds *in forma pauperis*, it remains Plaintiff’s sole responsibility to provide the Court with the requisite forms and a proper address through which service can be made. Plaintiff has yet to provide an address for Mr. Cuoco, but he has filed three motions since entry of the Court’s last order.

(Doc. 12). Admonishing Plaintiff a second time, the Court explained that Rule 4(m), Fed. R. Civ. P. requires service within ninety days after the complaint is filed, following which a court “must dismiss...or order that service be made within a specified time.” The undersigned noted that Plaintiff’s 90-day time period for service had expired on July 12, 2017. While granting Plaintiff a further extension of time through August 15, 2017, the undersigned emphasized: “**Plaintiff is forewarned that his pro se status does not entitle him to endless extensions of the time period for service.**” (*Id.*, emphasis original).

Plaintiff has now been warned in two separate orders that he must provide a valid address for service upon Defendant Cuoco, and that his failure to do so could result in dismissal of his claims against that Defendant. This Court previously extended the allotted time to serve Defendant Cuoco under Rule 4(m), despite Plaintiff’s failure to

show “good cause” for any extension. However, the extended period for serving Defendant Cuoco expired on August 15, 2017. To date, Plaintiff has failed to provide this Court with a valid address at which service upon that defendant might be achieved. Plaintiff previously was expressly warned that dismissal of unserved Defendants is required under Rule 4(m).

Accordingly, **IT IS RECOMMENDED THAT** Defendant John A. Cuoco be **DISMISSED** from this case based upon Plaintiff’s failure to provide the requisite forms for effective service, failure to timely comply with this Court’s June 12, 2017 Order regarding the same, and failure to prosecute his claims against that Defendant.

s/ Stephanie K. Bowman  
Stephanie K. Bowman  
United States Magistrate Judge

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**NOTICE**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation (“R&R”) within **FOURTEEN (14) DAYS** of the filing date of this R&R. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent’s objections within **FOURTEEN (14) DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. See *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6<sup>th</sup> Cir. 1981).